

## **Exhibit H**

### **Substantive Requirements**

- King County Special Use Permit for Septic Drainfield (to be provided by King County)
- King County Special Use Permit for Levee Cleanup Project (to be provided by King County)
- Hydraulic Project Application (To be provided by Washington Department of Fish and Wildlife prior to start of work)
- Water Quality Protection Requirements – See Exhibit H.1, attached
- Town of Skykomish Requirements – See Exhibit H.2, attached

## **Exhibit H.1**

### **Substantive Water Quality Requirements**

#### **A. No Impairment of Water Quality:**

- A1. The South Fork of the Skykomish River is classified as Class AA waters of the state. Turbidity in Class AA waters shall not exceed 5 NTU over background when the background turbidity is 50 NTU or less, or has more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
- A.2 The discharge or release of oil or petroleum hydrocarbons into or on the surface of state waters is prohibited. If a visible oil sheen is observed beyond the limits of the oil boom containment system as described Engineering Design Report- Levee Remedial Action, Former Maintenance and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 03 March 2006 then all appropriate actions to stop, contain, and cleanup the oil shall be taken.

#### **B. Notification**

- B1. BNSF shall provide notice to Ecology's Louise Bardy at least 3 days prior to the start of construction. Notification can take place by e-mail to [Lbar461@ecy.wa.gov](mailto:Lbar461@ecy.wa.gov), telephone to (425) 649-7209, fax to (425) 649-7098, or in writing.

#### **C. Upland Construction, Excavation, and Grading**

- C1. Cleanup of the upland soils shall be remediated such that the soil and groundwater at the site shall meet the provisions of the Model Toxics Control Act (Chapter 173-340 WAC) before final grading is completed.
- C2. Dewatering water both from upland and in-water excavation shall not be discharged to surface water unless testing indicates that it meets all water quality standards at the point of discharge as authorized by National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3 issued for this project.
- C3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal or treatment as authorized by National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3 issued for this project and shall not be directly discharged into state waters or storm drains.
- C4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, and all other equipment, etc., shall be checked daily for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of the river.

- C5. Equipment used for in-water construction prior to or after removal of the cofferdam, as defined in D5, shall be free of external petroleum-based products..
- C6. A qualified Engineer shall be on site to oversee project construction. A qualified ecologist or equivalent shall be on site to oversee riparian planting.
- C7. With seven calendar days of completion of project grading work, all disturbed riparian areas shall be protected from erosion using vegetation or other means.

**D. In-water Construction**

- D1. This document authorizes a mixing zone of 300 feet as described in WAC 173-201A-110(3) for necessary in-water construction activities that disturb in-place sediments during installation and removal of the cofferdam. No discharges or mixing zone is authorized for release or leakages from within the cofferdam into the Skykomish River once it is installed. During cofferdam installation, BNSF or its contractors shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART).
- D2. Timing Limitations: Excavation of the contaminated sediments and soils within the in-water portion of the project area shall occur tentatively between July 1 and August 31. These dates are subject to change by Washington Department of Fish and Wildlife. A qualified fisheries biologist shall be on site during cofferdam placement, cofferdam removal, and any fish removal activities from the work area. The fisheries biologist will be on-call during the excavation of soil or sediments and subsequent back filling of the excavation. The designated fisheries biologist shall be approved by the Department of Fish and Wildlife Area Habitat Biologist prior to cofferdam placement.
- D3. If at any time as a result of project activities fish are observed in distress, a fish kill occurs, or water quality problems develop (including equipment leaks or spills) operations shall cease and the following agencies shall be contacted: Department of Ecology at (425) 649-7000 and Washington Department of Fish and Wildlife (WDFW) at (360) 534-8233. Work shall not resume until further approval is given by WDFW and the Department of Ecology.
- D4. Fish habitat components and bank protection material shall be installed to the standards required by the US Army Corps of Engineers permit issued for this project and as described in the Engineering Design Report Levee Remedial Action.
- D5. **Water Quality Monitoring:**  
An in-water construction Water Quality Monitoring Plan shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of the South Fork of the Skykomish River during installation of a cofferdam, the removal of contaminated soils and sediments within the confines of a cofferdam, and the removal of the cofferdam. The Water Quality Monitoring Plan shall be submitted to Ecology for review and approval prior to at least 14 days before in-water construction is

scheduled to begin. Ecology may require changes and modifications to the plans. The plan shall include the following minimum requirements:

Sampling during installation and removal of the cofferdam:

- a. Location of samples: Background samples shall be collected upstream or up gradient of the area of activity, and 300 feet downstream or down current from the construction or activity. Performance monitoring samples shall be taken 300ft downstream from the coffer dam.
- b. Number and timing of samples: Background samples will be taken prior to the start of daily in water construction activities. Samples shall be collected a minimum of every two (2) hours throughout the first day of in-water construction activity. Subsequent sampling is dependent on monitoring results, but shall be a minimum of three (3) times per day simultaneous with in-water activity. Sampling shall increase if turbidity exceedances are observed or measured.
- c. Parameters to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in Class AA waters are as follows: turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. The water quality standard for oil is no visible sheen. If exceedances of these standards are detected, as a result of water quality sampling and monitoring, BNSF Railroad, or its contractors shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, BNSF shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to prevent recurrence of the turbidity.

Sampling during in-water excavation behind the cofferdam:

- a. Location of samples: Background samples shall be collected upstream or up gradient of the area of activity, and 300 feet downstream or down current from the oil containment boom. Performance monitoring samples shall be taken 300ft downstream from the oil containment boom.
- b. Number and timing of samples: Background samples will be taken prior to the start of daily in water construction activities. Samples shall be collected a minimum of three (3) times per day simultaneous with in-water activity. Sampling shall increase if turbidity exceedances are observed or measured.
- c. Parameters to be sampled: Turbidity shall be sampled for this project. Visual observations for an oil sheen between the confines of the two cofferdams and downstream of the oil containment boom shall be conducted at the same time.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.

- e. Detection of exceedances: Water quality standards for turbidity in Class AA waters are as follows: turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. The water quality standard for oil is no visible sheen. If exceedances of these standards are detected, as a result of water quality sampling and monitoring, BNSF shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, BNSF shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to prevent recurrence of the turbidity or oil exceedance.

**D6. Reporting of results:**

Results of water quality monitoring shall be submitted to Department of Ecology BNSF SKYKOMISH Project Manager, Toxics Cleanup Program, 3190 – 160<sup>th</sup> Avenue SE, Bellevue, WA, 98008-5452, fax 425-649-7098 or as directed. If no exceedances are detected, results shall be submitted once a week. If exceedances are detected, results shall be submitted daily and contingency measures and reporting shall be taken as required.

**E. Stormwater Management:**

- E1. BNSF shall comply with the Stormwater Management Manual for Western Washington, February 2005 and the “Construction Stormwater Pollution Prevention and Sediment and Erosion Control Plan, Engineering Design Report- Levee Remedial Action, Former Maintenance and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 01 March 2006
- E2. During construction, BNSF shall comply with all stormwater requirements within the National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3 issued for this project.
- E3. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., detention and/or infiltration areas, silt fences, etc.), shall be in place before starting clearing, excavating, and grading work at the impact site.

**F. Reporting and Monitoring:**

- F1. Maintenance and monitoring shall occur as specified in the “Engineering Design Report- Levee Remedial Action, Former Maintenance, and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 01 March 2006
- F2. Installation of the project plantings shall be completed prior to the start of the first growing season (March 1) subsequent to project clearing or grading.

- F3. Project plantings shall be maintained and irrigated as necessary to ensure 80 percent or greater survival at the end of five years.
- F4. Spring and fall inventories for invasive species shall be taken annually for the first five years post-construction.
- F5. Invasive species shall be controlled such that they do not exceed more than 10% total cover at any time.

**G. Emergency/Contingency Measures:**

G1. In the event the BNSF Railroad or its contractors are unable to comply with any of these conditions due to any cause, they shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Louise Bardy at (425) 649-7209.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

**H. General Conditions:**

- H1. For purposes of this document, the term "BNSF" shall mean the BNSF Railway Co. and its agents, assigns, and contractors.
- H2. This document does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- H3. BNSF will be out of compliance with this document if the project is constructed and/or operated in a manner not consistent with the project description contained in the Engineering Design Report- Levee Remedial Action, Former Maintenance, and Fueling Facility, Skykomish, Washington prepared by the RETEC Group, dated 01 March 2006, or the National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003212-3, or plans otherwise required and approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- H4. Copies of this document shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects

of this Order, the NPDES permit, and any subsequent revision or Ecology-approved plans.

- H5. BNSF shall provide to Ecology a signed statement from each project manager and construction superintendent working at the project site that they have read and understand the conditions of the above-referenced documents, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the site.
- H6. The applicant shall provide access to the project site by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this document are being met.
- H7. Nothing in this document waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public health or the environment.

## **Exhibit H.2**

### **Town of Skykomish Requirements**

Town municipal codes and permit requirements that apply to the remedial actions performed by Burlington Northern Santa Fe during the cleanup process are listed below. Included are a sampling of appropriate excerpts from the code and descriptions of requirements.

#### **Chapter 8.05 Noise Regulations**

**8.05.020** The town of Skykomish hereby adopts the most current King County Noise Ordinance, KCC Title 12, Chapters 12.86 through 12.99 KCC by reference, a copy of which will be kept on file at Skykomish Town Hall.

**8.05.030(3)** The following sounds may, depending upon location, be public disturbance noises in violation of this chapter:

(h) Sounds originating from construction sites, including but not limited to sounds from construction equipment, power tools and hammering between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and 9:00 p.m. and 9:00 a.m. on weekends;

(i) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances, including but not limited to sounds from lawnmowers, power hand tools, snow removal equipment and composters between the hours of 9:00 p.m. and 7:00 a.m. on weekdays and 9:00 p.m. and 9:00 a.m. on weekends.

(4) Exclusion. This chapter shall not apply to the following:

(b) Construction or maintenance activities in the town's right-of-way that have been approved by the mayor or mayor's designee to minimize the impact on adjacent property owners

#### **8.05.050 Variance.**

The mayor or mayor's designee, may, upon written application filed with the town clerk, grant a variance from the provisions of this chapter and authorize the issuance of a special permit for an activity when it finds that such a variance is in the public interest, or when it finds the activity will have substantial public participation.

#### **Chapter 12.10 Protection and Preservation of Public Rights-of-Way**

**12.10.030(2)** The town council of Skykomish hereby adopts the most current road standards of King County published by King County department of public works.

#### **12.10.040 Applicability.**

(2)(b) Any land development abutting and impacting existing roads shall improve the frontage of those roads in accordance with these standards. The extent of improvements shall be based on an assessment of the impacts of the proposed land development.

(2)(e) Any major disruption of the current road surfaces and right-of-way facilities shall be repaired to the current King County road standards. (Ord. 332 § 4, 2003)

#### **12.10.050 Application, permit and fees.**

(1) Any construction, repair, installation or use within, upon, above or below any public rights-of-way within the town of Skykomish shall be covered by a street use agreement issued by the town of Skykomish. This agreement is valid for 60 days from date of issue, unless otherwise specified.



(4) All fees shall be paid in advance of the commencement of work. For a fee schedule see the latest town of Skykomish resolution relating to such fees. (Ord. 332 § 5, 2003)

#### **15.05 Codes adopted.**

The following codes are adopted by reference:

(1) The International Building Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-50 WAC, and adopted by the State Building Code Council;

(2) The International Residential Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-51 WAC, and adopted by the State Building Code Council;

(3) The 2003 Edition of the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the State Building Code Council;

(4) The International Mechanical Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-52 WAC, and adopted by the State Building Code Council, except that the standards for handling liquefied petroleum gas installations shall be NFPA 58, "Storage and Handling of Liquefied Petroleum Gases" and ANSI Z223.1/NFPA 54, "National Fuel Gas Code," and excluding Chapter 1, "Administration";

(5) The International Fire Code, 2003 Edition, published by the International Code Council, and as amended as set forth in Chapter 51-54 WAC, and adopted by the State Building Code Council;

(6) The 1997 Edition of the Uniform Code for the Abatement of Dangerous Buildings, as published by the International Conference of Building Officials;

(7) The 2003 Washington State Energy Code, as amended as set forth in Chapter 51-11 WAC, and adopted by the State Building Code Council;

(8) The 2003 Washington State Ventilation and Indoor Air Quality Code, as amended as set forth in Chapter 51-13 WAC, and as adopted by the State Building Code Council;

(9) The 1997 Edition of the Uniform Administrative Code, as published by the International Conference of Building Officials;

(10) The 2003 International Fuel Gas Code as published by the International Code Council;

(11) The 1997 Uniform Building Code, Table I-A only, as published by the International Conference of Building Officials.

#### **Chapter 15.10 Regulation of Mobile Homes, Trailers, and Motor Homes**

##### **15.10.040 Permit required.**

All mobile homes must obtain a permit before being placed on property within the town.

##### **15.10.050 Compliance.**

All owners of said mobile homes shall comply with the town code regarding septic tanks, electrical and other building or fire codes. No cesspools or dry wells will be permitted. (Ord. 128 § 5, 1977)

**15.10.060 Water and garbage accounts.**

There shall be a water shutoff provided for each mobile home and the occupants must pay residential rates for water and garbage, and further, that the property and owner shall be responsible for all water and garbage accounts. (Ord. 128 § 6, 1977)

**Chapter 15.15 Landmarks Protection and Perpetuation**

**15.15.020 Design review board.**

(1) There is created a town of Skykomish design review board which shall advise town council and operate within the framework of the design guidelines for Skykomish, Washington, Chapter 18.90 SMC

**Chapter 18.90 Design Guidelines**

**18.90.010 Preface.**

(3) A formal design review is mandatory for all exterior projects in the historic commercial district, and for all projects affecting landmark properties. For properties in residential use, compliance with the findings of the design review board is voluntary on the part of the applicant. For properties in commercial or public use, and for all landmarks compliance is required.

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**Clearing and Grading Permits**

*Clearing and Grading Permits* are required for vegetation clearing and earthwork activities including, but not limited to: contouring, excavation, filling, or creation of impervious surfaces that are proposed apart from similar activities included in building permits. (chapter 15.20)

**Conditional Use Permits**

The Skykomish zoning ordinance identifies allowed *Conditional Uses* in each zoning district if such uses do not introduce incompatible, detrimental, or hazardous conditions at their proposed locations. Conditional Uses are deemed unique due to factors such as size, technological processes, equipment, or location with respect to surroundings, streets, existing improvements, or demands on public facilities.

Conditional Uses will be subject to review by the Town resulting in approval of *Conditional Use Permits*. Conditional Use Permit requirements are described in Chapter 18.70 of the Skykomish Municipal Code.

**Critical Area Reasonable Use Exceptions**

*Reasonable Use Exceptions* may be granted in cases where strict application of the critical area regulations would deprive a property of privileges enjoyed by other properties with similar characteristics because of special features or constraints unique to the property involved. They are intended only to relieve hardship in special cases and not to avoid compliance with the intent of the regulations. A reasonable use exception may relax the applicable critical regulation requirements with respect to the use of the property. Exceptions address the physical aspects of site improvements and are not intended to circumvent restrictions on land use. Reasonable use exceptions are described in Chapter 16.15 of the Skykomish Municipal Code.

**Flood Damage Prevention Permits**

*Flood Damage Prevention Permits* may be granted in cases where development is proposed on property within a flood hazard area as identified in Chapter 16.10 of the Skykomish Municipal Code. These permits may be consolidated with building permits or clearing and grading permits, depending upon the type of development proposed.

**Shoreline Conditional Use Permits**

*Shoreline Conditional Use Permits* are required for projects which propose uses that are designated by the SMP as Conditional for the Shoreline Environment in which they are proposed. Conditional uses are

those which, due to their nature and potential impacts, could not be allowed outright but may be found to be appropriate on a case by case basis. **Only uses designated as conditional uses for a given Shoreline Environment may be so permitted.**

Shorelines within the Town of Skykomish are designated as either Suburban Environment or Rural Environment. The boundaries of these Environments are described and mapped in Chapter 7 of the SMP.

The SMP designates the following as **permitted uses**:

Suburban Environment

Agriculture  
Water Dependent Recreation  
Water Related Recreation  
Single Family Residential  
Transportation  
Utilities - Primary

Rural Environment

Agriculture  
Water Dependent Recreation  
Single Family Residential  
Utilities - Primary

The SMP designates the following as **conditional uses**:

Suburban Environment

Aquaculture in Man-Made Ponds  
Flood Hazard Management  
Mining  
Non-Water Related Recreation

Rural Environment

Aquaculture in Man-Made Ponds  
Flood Hazard Management  
Mining

Definitions, policies, and regulations for each use are listed in Chapters 1, 2, and 5 of the SMP.

**Shoreline Substantial Development Permits**

*Shoreline Substantial Development Permits* are required for any project or activity within the Town's shoreline management jurisdiction including:

**Any use or activity consisting of:**

- Construction or exterior alteration of structures
- Dredging
- Drilling
- Dumping or filling
- Removal of sand, gravel, or minerals
- Bulkheading
- Driving of piles
- Placing of obstructions

**Or:**

Any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlaying lands subject to the Shoreline Master Program at any state of water level.

**Which:**

Has a total cost or fair market value in excess of two thousand five hundred dollars (\$2500).

**Or:**

Materially interferes with the normal public use of the waters or shorelines of the Town.

**Shoreline Variances**

*Shoreline Variances* are required for any project which proposes to deviate from the performance standards set forth in the SMP. **Variances are granted only in extraordinary cases where strict implementation of the SMP would impose unnecessary hardships on the applicant.** Variances apply

only to deviations from performance standards -- requests for types of use other than those permitted outright in the SMP require Conditional Use Permits.

### **Zoning Variances**

*Zoning Variances* may be granted in cases where strict application of the zoning code would deprive a property of privileges enjoyed by other properties in the same zone because of special features or constraints unique to the property involved. They are intended only to relieve hardship in special cases and not to avoid compliance with the intent of the zoning ordinance. A variance may relax the zoning code's requirements with respect to size, location, height, coverage or other performance standards which regulate structures or signs. Variances address the physical aspects of structures or site improvements and are not intended to circumvent restrictions on use. Zoning variances are described in Chapter 18.65 of the Skykomish Municipal Code.